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Supreme Court of the United States

OCTOBER TERM, 1956

NO. ~~1070~~ 175

BOSTON PRINTING PRESSMEN'S UNION NO. 67,

PETITIONER,

v.

POTTER PRESS,

RESPONDENT.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

HAROLD ROSENWALD
85 Devonshire Street
Boston, Massachusetts

Supreme Court of the United States

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I.

Question Presented

Whether Section 301 of the Labor Management Relations Act of 1947 authorizes the Federal courts to enforce a provision in a collective bargaining agreement between an employer and a labor organization representing employees in an industry affecting interstate commerce whereby the parties undertake to submit to arbitration any failure to agree concerning the terms and conditions of employment to take effect upon the expiration of such agreement.*

* In the courts below petitioner also sought enforcement of such arbitration pursuant to the United States Arbitration Act, and a declaratory judgment to the effect that the collective bargaining agreement between the parties required such arbitration pursuant to the Federal Declaratory Judgment Act. These issues have not been set forth in the petition for certiorari and are assumed to be abandoned. Supreme Court Rules, Rule 23 1 (c).

II.

Argument

This case comes to this Court in the wake of *Textile Workers of America v. Lincoln Mills of Alabama*, 353 U.S. ——; *General Electric Company v. Local 205, United Electrical, Radio & Machine Workers of America (U.E.)*, 353 U.S. ——; and *Goodall-Sanford, Inc. v. United Textile Workers of America*, 353 U.S. ——, all decided on June 3, 1957. The *General Electric* and *Goodall-Sanford* cases, like the present case, arose in the First Circuit.

The issues in the *General Electric* case were all raised in the present case. Such were the questions whether Section 301 of the Labor Management Relations Act, 1947, 61 Stat. 136 (1947); 29 U.S.C. Sec. 141 *et seq.*, confers jurisdiction upon the Federal courts in respect of an action for violation of a contract between a labor organization and an employer engaged in interstate commerce; whether Section 301 or the United States Arbitration Act, 61 Stat. 669 (1947); 9 U.S.C. Sec. 1 *et seq.*, authorizes the enforcement of an agreement to arbitrate a dispute arising under a collective bargaining agreement between such a labor organization and employer; and whether the Norris-La Guardia Act, 47 Stat. 70 (1932); 29 U.S.C. Sec. 101 *et seq.*, withdrew from the Federal courts the power to enforce such arbitration.

Had this Court reversed the *General Electric* case on any of the foregoing issues, the present case would have been controlled, adversely to petitioner, by that decision. And for that reason the Court of Appeals deferred its decision in this case, awaiting the disposition by this Court of the *General Electric* case. See 241 F.(2d) 787, 789. However, prior to the decision of this Court in the *General Electric* case, the Court of Appeals decided this case

on a ground that was not present in the *General Electric* case and which sharply distinguishes the two cases.

Arbitration was sought in the *General Electric* and its companion cases concerning grievances. Work loads and work assignments were involved in the *Lincoln Mills* case; the layoff of employees, in the *Goudall-Sanford* case; and the appropriate wage rate to be paid an employee and the justification for a discharge, in the *General Electric* case. Each such grievance was in substance a claim for the alleged breach of a collective bargaining agreement. In contrast, the dispute concerning which arbitration was sought in the present case involves no claim for breach of contract but a failure of the parties to agree on the terms and conditions of a renewal collective bargaining agreement. Thus, the precise issue in this case is whether Section 301 empowers the Federal courts to enforce an agreement to "arbitrate" future conditions of employment, or, in the phrase of Judge Wyzanski, "*prospective* or *quasi-legislative* arbitration" (R. 33), or "arbitration of the nonjusticiable dispute." See Gregory and Orlikoff, "The Enforcement of Labor Arbitration Agreements," 17 U. Chi. L. Rev. 233, 248 *et seq.* (1950).

The issue in this case is *res nova* in this Court. Furthermore, there is no decision of any other court of appeals which is in conflict with the decision herein.

Under the Railway Labor Act, 44 Stat. 577 (1926) as amended; 45 U.S.C. Secs. 151 *et seq.*, two courts of appeals have enforced arbitration awards where the underlying disputes involved such nonjusticiable or legislative matters as new wage rates and hours of labor. *See Atchison, etc. Ry. Co.* v. *Brotherhood of L. F. & E.*, 26 F.(2d) 413 (C.A. 7th, 1928); *Atchison, etc. Ry. Co.* v. *Ferryboatmen's Union*, 28 F.(2d) 26 (C.A. 9th, 1928). But enforcement of arbitration awards lies within the traditional equity powers of the Federal Courts. *Red Cross Line* v. *Atlantic Fruit Com-*

Furthermore, the case has been correctly decided by the courts below. Both as a matter of statutory construction and by virtue of constitutional limitations, Section 301 should be construed not to authorize enforcement of so-called arbitration of nonjusticiable disputes.

The Court of Appeals held that the power of the Federal courts to enforce arbitration agreements is defined in the United States Arbitration Act (9 U.S.C.), and that that statute does not extend to the arbitration of nonjusticiable disputes. This conclusion applies, a fortiori, to Section 301.

Enforcement of agreements to arbitrate the terms of collective bargaining agreements to take effect in the future has been denied under usual arbitration statutes. *In re Buffalo and Erie Ry. Co.*, 250 N.Y. 275 (1929); *Cont. Bk. Supply Co. v. Int. Brotherhood of Bookbinders*, 239 Mo. App. 1247, 201 S.W. (2d) 531 (1947). These decisions rest on the ground that it is the function of courts not to make contracts for parties but to enforce them.

Amendments to the New York Arbitration Law, adopted subsequently to the *Buffalo and Erie* case, have specifically authorized arbitration of "controversies dealing with rates of pay, wages, hours of employment or other terms and conditions of employment" (New York Laws, 1940, Chapter 851), "without regard to the justiciable character of such controversy or controversies" (New York Laws, 1952, Chapter 757). See New York Civil Practice Act, Sec. 1448. Under these amendments, agreements to arbitrate nonjusticiable disputes arising under existing contracts are now enforced; *Hotel Concord, East Point Hotels v. Hotel Front Service Employees Union*, 140 N.Y.S. (2d) 848 (1955), *Duinas v. Slovika*, 89 N.Y.S. (2d) 842 (1949), although arbitration of the terms of a future contract has, so far as we can determine, never been compelled. See Gregory and Orlikoff, *op. cit. supra*, 17 U. Chi. L. Rev. at 250.

Our minimum contention is that arbitration of nonjusticiable disputes should not be enforced without explicit statutory authorization. Congress should determine, after full consideration, whether the enforcement of such agreements is in the national interest. Surely there is nothing in Section 301 or its legislative history that indicates that Congress intended Section 301 to reach such agreements.

Furthermore, if Section 301 were construed to authorize the enforcement of arbitration of nonjusticiable disputes, it might be unconstitutional. Since the basic dispute between the parties is their failure to agree concerning the terms and conditions of a contract, there is grave doubt whether this proceeding constitutes a "case" or "controversy" within the meaning of Section 2 of Article III of the Constitution. See *Aetna Life Insurance Co.* v. *Haworth*, 300 U.S. 227 (1937); *Nashville, C. & St. L. R. Co.* v. *Wallace*, 288 U.S. 249 (1933); *Liberty Warehouse Company* v. *Grannis*, 273 U.S. 70 (1927). Neither party has "suffered a wrong through the action of the other [party], furnishing ground for judicial redress. . . ." *Massachusetts* v. *Missouri*, 308 U.S. 1, 15 (1939). To avoid this Constitutional question, Section 301 should be construed not to extend to the enforcement of arbitration of nonjusticiable disputes.

A remand of this case to the Court of Appeals for reconsideration in the light of the *Lincoln Mills* group of cases would serve no useful purpose. That Court has already held that the United States Arbitration Act, with general provisions defining matters subject to arbitration, does not cover nonjusticiable disputes. That Court would surely reach the same conclusion in construing the vague provisions of Section 301.

Conclusion

The case was correctly decided below. There is no conflict of decisions and no important question of Federal law that should be decided by this Court at this time. We therefore respectfully submit that the petition for a writ of certiorari should be denied.

HAROLD ROSENWALD
85 Devonshire Street
Boston, Massachusetts
Attorney for Respondent

SCHNEIDER, BRONSTEIN & SHAPIRO
Of Counsel

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